tion to the court to compel the plaintiff to submit to a physical examination by physicians appointed by the court. *Held*, the court has no power to compel such examination. *Yazoo & M. V. R. Co. v. Robinson* (Miss.), 65 South 241.

The principal case has some support. *Union Pac. R. Co.* v. *Botsford*, 141 U. S. 250; *Atchison, T. & S. F. R. Co.* v. *Melson* (Okla.), 134 Pac. 388. But by the weight of authority in an action for damages for an injury, the plaintiff can in the discretion of the court, be compelled to submit to a physical examination. *Illinois Cent. R. Co.* v. *Beeler* (Ky.), 135 S. W. 305; *Denver Tramway Co.* v. *Roberts*, 43 Col. 522, 96 Pac. 186; *Wanek* v. *Winona*, 78 Minn. 98, 80 N. W. 851. Where there is no necessity for an examination, the injuries being internal, no examination will be required. *Gulf, C. & S. F. R. Co.* v. *Gibbs*, 33 Tex. Civ. App. 214, 76 S. W. 71. It has been held that where there had been a previous examination by a physician of the defendant the plaintiff will not be compelled to submit to an examination by physicians appointed by the court. *Louisville & N. R. Co.* v. *McClain*, 23 Ky. L. 1878, 66 S. W. 391. Where the physician which the defendant asked to be appointed to examine the plaintiff was considered by the plaintiff hostile or unfriendly to him, it was held that such appointment would not be made. *Stack* v. *New York, N. H. & H. R. Co.*, 177 Mass. 155, 58 N. E. 686. The defendant has no right to compel the plaintiff to submit to an X-Ray photograph although there is express authority by statute to compel plaintiff to submit to a physical examination in such case. *State* v. *Call* (Fla.), 59 South. 789, 41 L. R. A. (N. S.) 1071. But in such case, it seems, the physician in his examination may use an X-ray. *Ibid.* An examination which requires the use of drugs or anesthetics will not be allowed. *Strudgeon* v. *Sand Beach*, 107 Mich. 496, 65 N. W. 616. But it has been held that in an examination for injury to plaintiff's eyes that drugs may be used to dilate the pupils if such could be done without deleterious consequences. *Atchison, T. & S. F. F. Co.* v. *Palmore*, 68 Kan. 545, 75 Pac. 509.

EQUITY—CONVEYANCE IN CONSIDERATION OF FUTURE SUPPORT—RESCISSION.—Land was conveyed in consideration of future support recited in the deed. The grantees did not discharge their obligation, and a bill in equity was brought to charge the land with a lien for support and for general relief. *Held*, rescission is the plaintiff's proper remedy. *Grant* v. *Swank* (W. Va.), 81 S. E. 966. See NOTES, p. 146.

JUDGES—DISQUALIFICATION—RELATION TO PARTY IN INTEREST.—A statute provided that a judge shall be disqualified to sit in any case in which he is related to any party to said cause within the fourth degree. A son of a judge was counsel for one of the parties, his fee being contingent upon his winning the case. *Held*, he is a party within the meaning of the statute. *State* v. *Pitchford* (*Okla.*), 141 Pac. 433. See NOTES, p. 147.

MUNICIPAL CORPORATIONS—TAXATION — PUBLIC ENTERPRISE.—The Legislature of Maine authorized cities of a certain class to operate munici-

pal wood, coal and fuel yards for the public benefit, when such yards should be favorably voted upon in referendum elections. Pursuant to this act, after a favorable referendum vote, the city council of Portland passed an ordinance appropriating certain money as a preliminary to the actual establishment of such a business. Upon petition of taxpayers asking for an injunction restraining the expenditure of this money: *Held*, taxes may be levied to finance such a business since it is a public enterprise. *Laughlin* v. *City of Portland* (Me.), 90 Atl. 318. See NOTES, p. 152.

PARTNERSHIP—QUASI-PARTNERSHIP—PARTICIPATION IN PROFITS.—A person contracted to sell certain stocks and allowed the defendants to co-operate with him. They were all to perform certain services free; and the profits of the transaction were to be divided equally between them. One of the alleged partners, claiming to act for the partnership, became indebted to plaintiff. The plaintiff sued the defendants alleging a partnership. *Held*, participation in the profits, without more, will not create a partnership. *Wade* v. *Hornaday* (Kan.), 140 Pac. 870.

From the nature of the relationship, it follows that when a partnership *inter sese* exists, the relationship exists as to third persons also. See *Wild* v. *Davenport*, 48 N. J. L. 129, 7 Atl. 295. But the liability of a partner may be created as to third persons, so that the alleged partner may be liable for the firm debts by estoppel, when *inter sese* no such relationship exists. *Fletcher* v. *Pullen*, 70 Md. 205, 14 Am. St. Rep. 355. To invoke the doctrine of estoppel, there must be a holding out of the partnership relation by the party sought to be charged, or knowledge of the holding out and a failure to correct the false impression, and the party seeking to establish the partnership must have been misled by it. *Thompson* v. *First National Bank*, 111 U. S. 529. The jury determines the sufficiency of evidence to establish such a holding out. *Seabury* v. *Bolles*, 52 N. J. L. 413, 21 Atl. 952, 11 L. R. A. 136.

It was at one time established in England that mere participation in the profits of a business would create a partnership liability toward third persons by operation of law, since in taking a part of the profits of the business, a part of that fund is taken which secures to the creditors the payment of their debts. *Grace* v. *Smith*, 2 Wm. Blackstone 998; *Waugh* v. *Carver*, 2 H. Blackstone 235. This doctrine was formerly accepted by the American courts. *Pratt* v. *Langdon*, 97 Mass. 97, 93 Am. Dec. 61; *Cushman* v. *Bailey*, 1 Hill (N. Y.) 526. Profits represent the net gain received from a business after paying all of its expenses. *People* v. *Supervisors of Niagara County*, 4 Hill (N. Y.) 20. And the fallacy of the old doctrine is evident, for until the creditors are paid there can be no profits. But in England, it was later established that, while the right to share in the profits is one of the tests as to the existence of the partnership, such a right alone will not create the relation. *Cox* v. *Hickman*, 3 C. B. (N. S.) 523, 8 H. L. C. 268. Some American courts find great difficulty in abandoning the old rule, and follow it with certain limitations. *Brandon* v. *Conner*, 117 Ga. 759, 45 S. E. 371, 63 L. R. A. 260; *Leggett* v. *Hyde*,